IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 301 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHIRENDRAKUMAR HIRALAL SOLANKI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KJ SHETHNA for Appellant(s) : 1,
Mr.L.R.Pujari, A.P.P. for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 29/10/2007

ORAL JUDGMENT

1. This is an appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short, 'Code') challenging the judgment and order of conviction and sentence dated 16-3-1994 in Special Case no.6 of 1988 under which the learned Special Judge, Bharuch, convicted the present appellant-original accused for offence punishable under Section 161 of Indian Penal Code and sentenced to suffer R.I. for one year and to pay fine of Rs.2000/-, in default,to undergo further R.I. for six months. The appellant was also convicted for offence punishable under Section 5(2) of the Prevention of Corruption Act,1947 and sentenced to suffer R.I. for two years and fine of Rs.4000/-, in default of payment of fine, further R.I. for one year. The substantive sentences were ordered to run concurrently.

2. The facts of the prosecution case before the trial Court may be briefly stated as follows:

3. At the relevant time, the present appellant was working as a Veterinary Officer at Veterinary Dispensary, Ankleshwar, and as such he was a public servant. The complainant- Shri Ratanji Haribhai Ahir

had filed a complaint against the present appellant-accused before Shri B.S.Vasava at P.W.D. Rest House at Ankleshwar on 24-2-1987 at 17.00hrs. where he coincidentally met the said Police Inspector. That complaint ultimately came to be registered in Bharcuh ACB Police Station vide C.R.no.2/1987 at about 3.00 p.m. on 25-2-1987. The case of the complainant is that about one and half months before 24-2-1987, Naranbhai brother of the complainant was proceeding towards the Vegetable Market of Ankleshwar from his village Sakkarpur by driving his bullock cart, which was loaded with guava. At about 5.15 p.m. when he reached near Amalakhadi , an O.N.G.Jeep dashed against the bullock-cart driven by him as a result of which both the bullocks sustained bodily injuries. The driver of the said Jeep one Salim Adam of Ankleshwar lodged complaint in respect of the said accident, which came to be registered as CR no.II 440/1986. It is further the case of the complainant that the said bullocks which received bodily injuries were treated by the present appellant-accused at Veterninary Dispensary, Ankleshwar in his capacity as a Veterinary Officer. The Investigating Officer of the said criminal complaint Mr.Abhesinghbhai asked the complainant to approach the present-appellant

accused and collect the medical certificate in respect of the injuries sustained by the said bullocks. According to the complainant about two days before 24-2-1987, the complainant had gone to the present appellant-accused for obtaining the medical certificate but the present appellant-accused asked him to collect the certificate by paying Rs.100/-. Thereafter, the complainant accompanied by his father went to the present appellant-accused on that very day between 3.00 and 3.20 p.m. and requested that the said medical certificate be issued. The present appellant-accused then asked the complainant, if he had brought Rs.100/- to which the complainant replied in the negative. The present appellant –accused was adamant, told that the certificate will be issued only on payment of Rs.100/- and suggested that the complainant can come the next day with Rs.100/- at 11.00 a.m. The complainant and his father then returned from the Veterinary Dispensary and the said complaint came to be lodged before P.I. B.S.Vasava at P.W.D.Rest House at Ankleshwar who co-incidentally came there in connection with some inquiry. According to the complainant, Shri B.S.Vasava had asked the complainant to contact him on 25-2-1987 at 9.00 a.m. at P.W.D. Rest House at Ankleshwar as the raid was to

be carried out. He also arranged for two Panchwitness from the Office of the Mamlatdar, Ankleshwar. Accordingly, the Investigating Officer Mr. Vasava along with his staff members came to the P.W.D. Rest House, Ankleshwar, where the complainant and the Panchwitness also remained present at the said date and time whereupon Mr.Vasava introduced the complainant and Panchwitness among themselves. Upon instructions received from Mr.Vasava, I.O. the complainant had given brief details of the complaint and also read over the contents of the complaint to the Panchwitnesses who had put their signatures thereon in token thereof. Thereafter, on being asked, the complainant had produced one currency note of the denomination of Rs.100/-. The serial number of the said currency note was mentioned in the preliminary Panchnama, which was drawn at the office of the P.W.D. Rest House, Ankleshwar. Shri Ramdas a staff member of the A.C.B. then applied anthracene powder on the said currency note and all formalities as required under law were performed, a detailed note whereof is mentioned in the preliminary Panchnama. The tainted currency notes were then placed in the left pocket of the bush-shirt of the complainant. Necessary instructions were given to the complainant

as to how and when the tainted currency notes were to be given on demand by the present appellant-accused and the Panchas were also properly advised. Panch no.1 was told to accompany the complainant and to see and hear the conversation that takes place between the present appellant-accused and the complainant. At about 10.35 a.m. , the complainant, two Panchwitnesses, Investigating Officer Shri Vasava and his staff members left the P.W.D Rest House for Veterinary Dispensary, Ankleshwar, and halted the jeep near Jalaram Saw Mills on the way to the Veterinary Dispensary.. Thereafter, the complainant and Panch no.1 went towards Veterinary Dispensary while the Panch no.2 and other staff members of A.C.B positioned themselves surrounding the compound of the dispensary. It is further the case of the prosecution that Shri Vasava saw the complainant and Panch no.1 going inside the office of the present appellant-accused, but soon the complainant, Panch no.1 and the present appellant-accused came out of the office and were standing under a tree and talking. Then , the present appellant-accused went inside the office and so did the complainant and Panch no.1. Thereafter, the complainant came outside the office and gave a signal by making a gurgling sound and by spitting. .

Soon Shri Vasava and all the members of the raiding party including Panch no.2 rushed to the spot. Upon search of the body of the accused in presence of the Panchas one currency note of the denomination of Rs.100/- was found from the left pocket of the bush-shirt worn by the present appellant-accused. The serial number of this currency note when compared with the number of the currency note mentioned in the preliminary Panchnama, tallied. Ultraviolet lamp experiment was demonstrated in presence of the Panchas, anthracene powder was found on the currency notes, on the hands of the present appellant-accused and on the hands of the complainant.. The currency notes, bush-shirt worn by the present appellant-accused. The second part of the Panchnama was drawn and completed. Other relevant documents like Medico legal case register, other currency notes of Rs.434/-found from the right pocket of the pant worn by the appellant-accused, a receipt book of cash received by him were also seized under separate Panchnamas. The raid being successful, the complaint was registered. At the end of the investigation , necessary papers were sent to the competent officer by Mr.Vasava and sanction to prosecute the present appellant-accused was obtained. The accused was

arrested. Thereafter statements of witnesses were recorded and the, charge-sheet was filed against the present appellant for the aforesaid offence. Chare Exh.15 was framed, it was read over and explained to the present appellant-accused who pleaded not guilty to the said charge and claimed to be tried.

4. To prove its case against the appellant-accused the prosecution has examined – P.W.1 Shri Ratanji Haribhai Ahir-complainant at Exh.23, P.W.2 Gulam Mohmed Ismail-Panchwitness at Exh,25, P.W.3 Naranbhai Haribhai-brother of the complainant at Exh.29, PW 4 Haribhai Hirabhai-father of the complainant at Exh.30, PW 5 Deputy Supdt. Of Police Shri Bhimsinh Sursinh Vasava at Exh.34, PW 6 1st Grade Police Jamadar Abhesinh Rupabhai at Exh.41, PW 7 Shri Harihardas Vaidnath Shastri at Exh.45. The prosecution has also produced documentary evidence such as original complaint Exh.35, original sanction for prosecution Exh.46, trap Panchnama Exh.27, office copy of confidential letter written by P.I. A.C.B.Bharuch for requisitioning Panchwitnesses Exh.26, search Panchnama of house of appellant-accused Exh.28, Post mortem register (Muddamal article no.4) seized from the appellant-accused

Exh.38, the receipt book (Muddamal article no.5)seized from the accused, original police case diary of CR no.II 440/86 at Exh.44, closing purshis of prosecution Exh.50. The accused had not led any independent evidence in his defence, however, he has filed written statement Exh.51. The trial Court also recorded further statement of the appellant-accused under Section 313 of the Code. After hearing the arguments, the trial Court found the appellant guilty for the aforesaid offence, and therefore, the appellant and his Advocate was also heard of the question of quantum of punishment, and as a result thereof, the learned trial Judge passed the judgment and order of conviction and sentence as stated in para-1 of this judgment, giving rise to the present appeal.

5. I have heard the learned Counsel Mr. K.J.Shethna for the appellant-accused and learned A.P.P. Mr. Pujari for the respondent-State at length and in great detail. Both of them have taken me through the entire evidence and the relevant portion of the judgment of the trial Court. In fact, learned Advocate for the appellant-accused has read the

entire evidence of all the witnesses on record in order to substantiate his arguments.

6. It has been contended by the learned Counsel for the appellant-accused that there are major contradictions in the evidence of PW 1complainant, PW 2 Panchwitness, PW 3 Narayan-brother of the complainant and PW 4 Haribhai Hirabhai-father of the complainant regarding demand of bribe amount and acceptance of the amount by the appellant-accused as well as regarding place where the demand was made which affects the entire case of the prosecution. The learned Counsel while pointing out the contradictions in the evidence of these witnesses also drew my attention to the written submission of the appellant-accused so far as the contradiction in the evidence of witnesses are concerned. The learned Counsel next contended that the ACB Office is situated at Bharuch in spite of that complaint was lodged at P.W.D. Rest House, Ankleshwar. According to the learned Counsel, the complaint has not explained as to from which source the complainant derived the knowledge as to the availability of P.I.Vasava at the PW.D.Rest house on that day. The learned Counsel next submitted that the learned Special Judge has proceeded on an

erroneous footing that as it was a medico legal case,the appellant-accused was expected to administer free treatment as also issue medical certificate of injuries sustained by the bullocks of Naranbhai to the Investigating Officer of the accident case at the earliest in reply to Police Yadi with which the bullocks were sent to the Veterinary Dispensary Ankleshwar on 27-12-1986 and in doing so, has ignored the point that for the visit and for giving the medicine on his own, the appellant-accused is entitled to recover that is legitimately due to him. The learned Counsel next submitted that in view of the notification issued by the Agricultural and Co-operative Department, Sachivalay, Ahmedabad dated 17th January, 1969, the Veterinary Officer is permitted private practice and he is entitled to charge the fee as per the appendix attached to the Notification which is produced at Exh.40 and that it is the say of the present appellant-accused from day one of the trap that he had received the amount of Rs.100/- towards the charges of treatment and visit fee fixed by the Government as per said appendix and not towards the illegal gratification as the appellant-accused had given medicines to the bullocks on his own. According to the learned Counsel the appellant-

accused has also produced the bill in respect of the medicines showing from where it was purchased as also the explanation dated 12-3-1987 forwarded by the appellant-accused to the Secretary, Agricultural & Rural Department, Gandhinagar, (Exh.55) in which also the said fact is narrated at the earliest point of time after the trap was carried out. According to the learned Counsel, in spite of the fact that the appellant-accused was able to show that the amount received was not an illegal gratification and that the defence put forward by the appellant-accused is probable, believable and supported by corroborative evidence, the learned Judge has failed to appreciate the defence evidence produced by the appellant-accused and by wrongly interpreting and rejecting the same, held that the appellant-accused had received the amount of Rs.100/- towards illegal gratification. The learned Counsel next submitted that after lengthy chief-examination of the complainant PW 1, complainant was declared hostile with the permission of the Court and thereafter when leading questions were put by the learned A.P.P. then, the complainant answered all the leading questions by saying “Yes”, and hence the evidence of the complainant neither inspires confidence nor can reliance be placed on

such evidence as such kind of evidence should be totally rejected, how the learned Judge has accepted the same. The learned Counsel next submitted that PW 1 complainant at the first instance was not able to identify the appellant-accused and he specifically stated on oath before the Court that he could not identify because of lapse of time, however, at a later point of time when the accused was on the witness box and by going nearer to the box, this witness identified the appellant-accused and so the evidence of the complainant is not trustworthy and on such evidence no reliance can be placed. The learned Counsel next submitted that as per the evidence of PW 2 Panchwitness after receiving the amount of Rs.100/-, the appellant-accused was preparing the receipt which supports the defence of the appellant-accused and before the appellant could issue the receipt, he was cordoned by the ACB team and this fact is not considered by the learned Judge. The learned Counsel finally submitted that considering all these aspects, the learned Special Judge has committed grave error in convicting the appellant-accused. That on the whole, the judgment and order of conviction of the trial Court are erroneous, illegal and deserve to be set aside. It is, prayed that the

present appeal be allowed, the judgment and order of conviction and sentence be set aside and the appellant-accused be acquitted of the offence in question.

7. On the other hand, the learned A.P.P. Mr. Pujari for the respondent-State submitted that as per the defence put forward by the appellant-accused he has admitted in his further statement as well as by filing written reply Exh.51 before the trial Court that he accepted the amount of Rs.100/- not towards illegal gratification, but towards the charges of treatment and visit fee which is legitimately due to him but this defence is not believable considering the evidence on record since the learned trial Judge has minutely scrutinized the evidence in its proper perspective and has rightly come to the conclusion that the defence of the accused is not believable and that the burden is not refuted by the appellant-accused. According to the learned A.P.P. the learned trial Judge was right in holding that the amount in question was received by the appellant-accused towards illegal gratification and that the appellant is guilty of the charges levelled against him. It is the submission of the learned A.P.P. that the

findings arrived at and the judgment and order of conviction and sentence passed by the learned trial Judge is quite legal and proper which does not call for any interference at the hands of this Court, and therefore, the appeal deserves to be dismissed.

8. In light of this argument let us discuss the evidence. In the present case, the sanctioning authority has granted sanction under Section 6 of the Act which is produced and proved at Exh.46. Looking to the evidence of PW 7 Harihardas V.Shashtri it is clearly established that the santion accorded is not without application of mind and that is a legal and valid sanction which fact is also not in dispute. Now, let us go through the defence put forward by the appellant-accused in his further statement recorded under Section 313 of the Criminal Procedure Code as well as the written explanation submitted by the accused which is produced at Exh.51. As per the defence of the accused after receiving the amount of Rs.100/- from the complainant, while he was preparing the receipt, he was trapped and false case was filed. It is also stated by the appellant-accused that by letter dated 3rd March, 1987, he submitted explanation to the Director, Animal Husbandry, Gujarat State,

Paldi, and also submitted circular and receipt. In his written explanation, the appellant-accused also submitted explanation to P.I.Vasava and also handed over the circular to P.I.Vasava which was admitted by P.I.Vasava in his deposition Exh.33. As per the defence of the accused explanation submitted by him to the Director and receipt were produced by PW 7 Harihardas V.Shastri during his evidence before the Court at Exh.45. This witness also supported the defence of the accused. The present appellant-accused also admitted in his further statement that bullocks of the complainant sustained injury and it was a medico legal case and that he gave treatment to the bullocks, and hence certificate was also required to be issued. He also stated in his further statement that PW 1 complainant demanded for the issuance of injury certificate, but he (appellant-accused) denied that he demanded illegal gratification of Rs.100/- for issuing injury certificate for issuing injury certificate. According to the appellant-accused, he demanded the said amount from the complainant towards treatment charges. The appellant-accused also stated that complainant and his father came to him and demanded for the injury certificate and he demanded Rs.100/- towards charges of treatment and he received

said amount under the neem tree on 25th February, 1987. He also admitted that after receiving the amount of Rs.100/- he went into his office. At that time PW 1 complainant and his father Haribhai sat under the neem tree. As per the defence of the accused, in his office when he was preparing the receipt, P.I.Vasava and other members came to him and currency note was taken out from his pocket through P.I.Vasava and Panchnama was prepared. The appellant-accused also admitted that at the time of trap bush-shirt which was worn by him at the time of the trap was recovered by P.I.Vasava.

9. Taking into consideration, this defence it is only to be decided whether the amount of Rs.100/- which was received by the appellant-accused and which was recovered from him was towards the charges of treatment or towards the illegal gratification.

10. Before discussing the evidence of witnesses, it is required to be noted that the complainant, his brother and his father are residing in a small village, hailing from a poor strata of society. They being not acquainted with the Court atmosphere or Court procedure, contradictions, omissions and improvements are bound to occur in their evidence. Now, as far as demand and acceptance of Rs.100/- by

the appellant is concerned, when it is admitted by the appellant himself, the question whether the amount has been received under the neem tree or in the office does not assume any significance. Similar is the view on the question as to from which source the complainant derived the knowledge as to the availaility of P.I. Vasava at the P.W.D. Rest House on the day of lodging complaint and the complaint being lodged at P.W.D.Rest House, Ankleshwar, when the ACB Office is situated at Bharuch as it is a matter of coicidence and cannot be doubted as the accused himself has in his further statement admitted that on the day of trap complainant came to him at the Veterinary hospital and received Rs.100/- from him.

10.1 It is not in dispute that the bullock-car met with an accident on 25th February, 1987 as stated in the F.I.R. Which is produced at Exh.35 and on account of the accident two bullocks had sustained injuries and offence was registered as CR no.II 440 of 1986 at Ankleshwar Police Station for offence punishable under Section 279 of the Indian Penal Code and also under Sections 112 and 116 of the Motor Vehicles Act. It is also not in dispute that the said case was investigated by one Abhesinh Rupabhai PW 6

at Exh.41. The two bullocks were sent to Veterinary Dispensary, Ankleshwar for treatment as well as for getting certificate of injury sustained by the two bullocks. This fact is supported by the evidence of Muddamal Article no.4 Medico Legal Register which was seized during the investigation of the said corruption case and which is also proved through the evidence of Investigating Officer Bhimsinh Sursinh Vasava at Exh.34 and the said Muddamal article is exhibited at Exh.38. As per the entry Exh.38 at serial no.12, the present appellant-accused who was at the relevant point of time, the Veterinary Officer, Ankleshwar, has examined the two bullocks belonging to Naranbhai Haribhai PW 3, the brother of the complaint- Ratanji of Sakkarpur, with a request to PSI, Ankleshwar as per his Police Yadi of CR no.II 440/1986 dated 27th December,1983. It is pertinent to note that this entry is signed by the accused. Now, if we minutely scrutinised this entry, it is found that both the bullocks sustained bodily injuries and treatment was given to both the bullocks by the present appellant-accused. It is also mentioned in entry Exh.38 at serial no.12 that examination of both the bullocks were performed on 27-12-1986 at 14.00 hrs. From this evidence it is crystal clear

that both the bullocks were brought to the Veterinary Dispensary at Ankleshwar on 27-12-1986 and they were treated by the present appellant at 2.00 p.m. i.e. during office hours. So, as per this Police Yadi, it is required by the present appellant-accused to issue medical certificate showing the injuries. Now, if we go through the evidence of PW 6 Abhesinh Rupabhai at Exh.41, it has come out from his evidence that he was investigating the accident case of Bullocks belong to Naranbhai and in connection with the said case, he instructed Shri Naranbhai Haribhai to collect the medical certificate from the Veterinary Office i.e. the present appellant-accused. As per the evidence of this witness, Naranbhai did not turn up to him with the medical certificate till 9-1-1987 and that the medical certificate was not even received at the Police Station by post till 9-1-1987. Then this witness tried to contact the accused at 10.00 a.m. On 9-1-1987 but the appellant-accused was not available on that day and time. As per the evidence of this witness, he made note regarding his visit to Veterinary Dispensary at Ankleshwar in support whereof he has produced the case diary of the accident case which at Exh.44.

11. Learned Advocate Mr. Shethna submitted that it is settled legal position that case diary cannot be used as evidence, in spite of that, the learned trial Judge has accepted that document and in that committed error and interest of the appellant-accused is highly prejudiced. There is no force in this argument because the learned trial Judge has discussed the said aspect in his judgment and held that as the case papers of the said accident case could not be traced out, it was not possible for the concerned Police Officer to produce the same before the Court and since the case paper is not available as preliminary evidence to the prosecution, by means of secondary evidence the case diary is produced at Exh.44. It is rightly held by the trial Court that this police case diary comes from the proper custody and it is produced by the Investigating Officer of the accident case. It has also come out from the evidence of this witness Abhesing, I.O. PW 6, that it was written by him, properly maintained by him and it was sent to the SDPO on the very next day through the Police Inspector of the Police Station. So, the trial Court has rightly held that there is no reason to disbelieve this police case diary as it was maintained by the PW 6 Investigating Officer of

accident case during the course of his official duty as per Section 172(1) of the Criminal Procedure Code. It is also rightly held by the trial Court that when the police case papers of accident case are not rightly available and proved to be misplaced as per the letter Exh.65, the case diary Exh.44 can be used as a piece of evidence. It is to be noted that as far as this case diary Exh.44 is concerned, it cannot be used in accident case but for the purpose of corroboration in the case of corruption, it can be used as corroborative evidence. The learned trial Judge has elaborately discussed the legal provisions of Evidence Act and thereafter rightly held that case diary Exh.44 can be used as secondary evidence in this corruption case. Considering the evidence of PW 6 Investigating Officer and case diary of accident case bearing CR no.II 440/1986(Exh.44), it is prima facie established that PW 6 Investigating Officer of the accident case contacted the present accused and demanded medical certificate of injury sustained by the bullocks and as per the evidence of this witness, it is replied by the present appellant-accused that he would only issue certificate to the party after collecting certificate fee from them and the present appellant-accused also told the Investigating Officer

(PW 6) that whenever party (owner of the bullock) contacted him to ask them to see the appellant-accused. It is also mentioned in the case diary that thereupon he sent the complainant to the present appellant-accused for collecting the certificate. This evidence clearly shows that from beginning, the present appellant-accused by hook or crook wanted to collect the money for issuing the injury certificate. This evidence also clearly shows that till 7-12-1987 there was nothing in the mind of the appellant-accused to collect the treatment charges from the complainant. The trial Court has rightly held that the appellant-accused was not expected to demand any fee i.e. treatment fee or certificate fee because it was a medico legal case referred by the police , and therefore, intention and the conduct of the appellant-accused for the period unto 7-12-1987 is required to be noted.

12. Now, if we go through the evidence of PW 3 Naranbhai Haribhai recorded at Exh.29,we find that with Police Yadi he personally went to the Veterinary Dispensary at Ankleshwar at 10.00 a.m. and that the handed over the Police Yadi to the present appellant-accused who was present at that time., after which, the present appellant-accused treated the bullocks.

According to this witness, the present appellant-accused after having given treatment to the bullocks asked for treatment fee. This witness then asked the appellant-accused as to how he was expected to pay treatment charges when he had come with the Police Yadi to which the appellant-accused replied that irrespective of whether police Yadi is given or not, treatment charges will have to be paid. This witness has further stated that on the next day at about 8.30 a.m., the present appellant-accused went to the house of this witness and gave treatment to another bullock and demanded Rs.80/-towards his fees. According to this witness, the said amount of Rs.80/-was paid to the appellant-accused after obtaining the amount from his father. It is further stated by this witness that as police had asked him to obtain certificate of injury. This witness has further stated that as police had asked him to obtain certificate of injury to bullocks from the appellant-accused, the demanded the injury certificate from the appellant-accused. Thereupon, the appellant-accused asked this witness to collect the certificate by paying Rs.100/-. The learned trial Judge has rightly held that there is no cross-examination with regard to Rs.80/- paid to the appellant-accused (Doctor), and therefore from the

evidence of this witness Naranbhai PW 3 , it is proved that the present appellant went to the house of Naranbhai and after giving treatment to the bullock collected Rs.80/- as treatment charges though it was a medico legal case. Thereafter, now the present appellant-accused has come with a case that he received Rs.100/- from the complainant for the treatment charges. The trial Court has rightly held that this defence is quite contrary to the evidence of the prosecution which is not challenged in cross-examination of Naranbhai on the point of Rs.80/- being paid to the appellant-accused. PW 4 Haribhai, the father of the complainant, totally supports the evidence of Naranbhai and as per his evidence also, the appellant-accused came to the house of the complainant and after giving treatment demanded Rs.80/-towards the treatment charges and it was paid by his son Naranbhai in his presence. No doubt in cross-examination of PW 4 Haribhai a suggestion was made by the learned Advocate for the accused that he is deposing falsely to the effect that the appellant-accused demanded Rs.80/- after treating the bullocks and he paid Rs.80/- to Naranbhai who in turn paid the said amount to the appellant-accused in his presence, however, this witness has denied this suggestion.

After relying upon the case of Khimji Raj vs. State of Gujarat report in 1982(2) G.L.R. 438, the learned trial Judge had rightly held that merely because the suggestion was made to the witness that he was deposing falsely, it cannot be said that he is not believable, when the witness has categorically denied this suggestion in his evidence. The learned trial Judge who had the occasion to observe the demeanor of the witnesses, after minutely scrutinizing the evidence of PW 3 and PW 4 rightly came to the conclusion that the evidence of both these witnesses are trustworthy and found to be natural. This Court has also gone through the evidence of both these witnesses. I am in complete agreement with the view taken by the trial Court that the evidence of both these witnesses is trustworthy and reliance can be placed on the evidence of both these witnesses. After discussing the evidence of PW 3 and _PW 4, the learned trial Judge has rightly held that appellant-accused had demanded Rs.80/- as treatment fee from PW 3 Narayan at his house after giving treatment to the bullocks and said amount was paid by him. Then, accused cannot take defence that he received Rs.100/- from the complainant towards medical treatment to the bullocks on the day of trap. From the evidence, it is

clear that the appellant-accused had received amount towards issuance of injury certificate. In the opinion of this Court this witness is well educated and when it has come within his knowledge that there is a trap he had certainly tried to escape from the criminal liability. He tried his level best to save himself and so he very cleverly stated that he accepted Rs.100/- on the day of the trap towards medical treatment from the complainant. As discussed above, the defence put forward by the appellant-accused is totally false improbable and unbelievable.

13. It is also to be noted that for a considerably long period of time, he had neither sent the certificate to the concerned police station nor handed over to the complainant though it is an admitted fact that it is a medico legal case Moreover, after the trap, the appellant-accused suddenly sent the injury certificate by post to the concerned Police Station and it was received by the Investigating Officer on the next day i.e. 26-12-1986. This conduct of the appellant-accused speaks volumes regarding his guilt. No explanation was tendered by the accused to show as to why he had not issued injury certificate of the bullocks for such a long period though it was within his knowledge that

it was a medico legal case. Even assuming for the sake of argument that any amount is due for the previous treatment from the complainant, then also it is the bounden duty of the present appellant-accused to issue injury certificate to the Investigating Officer in a medico legal case..

14. As discussed above, as per the evidence of PW 6 Constable Abhesinh, Investigating Officer of the accident case, in fact, the Investigating Officer contacted the present appellant-accused and asked for the injury certificate of the bullocks, but in spite of that the appellant-accused had not handed over the injury certificate to him. From this evidence, the only inference that can be drawn is that the appellant-accused wanted to extract money from the complainant in the guise of issuing the injury certificate in a medico legal case.

15. It is vehemently argued by Mr. K.J.Shethna that as per the deposition of PW 7 Exh.45 Harihardas V.Shastri, ACB while sending papers of this case for obtaining sanction recommended that the present appellant-accused should be suspended. In pursuance of the said recommendation, the department has asked the report of the Director and the Director has made

report to the effect that the present appellant-accused is not required to be put under suspension for two reasons - one of the reasons is that the appellant-accused is already transferred and another reason is that the appellant-accused has produced the bill. According to Mr. Shethna, taking into consideration the explanation put forward by the appellant-accused which is produced at Exh.57 and the bill of medicine, the Director of the Department did not think it fit to suspend the appellant-accused which clearly shows that the accused is innocent. This submission of the learned Counsel cannot be accepted in view of the fact that the said decision was taken by the Director without holding any departmental inquiry and that too the order not to suspend was only for a certain period or for the time being.

16. Taking an overall view of the evidence as discussed above and the circumstantial evidence flowing therefrom, leads me to the only irresistible conclusion that the present appellant-accused received the amount of Rs.100/- for medical certificate of injury and not for medical treatment and that the explanation tendered by the appellant-

accused is an after thought for the following reasons and conclusions:

(i)The accused treated the bullock of witness Naranbhai in a Medico-legal police case referred to by the Investigating Officer Shri Abhesing Rupabhai , and hence, it is not a private case.

(ii)The accused was expected to give the medical treatment free charge to the bullocks and issue certificate to the Investigating Officer of that accident case directly as Police Yadi was sent to him because it was a medico legal case of accident.

(iii)Absence of entry in the Medico -legal Register at item no.12 Exh.38 to the effect that the medicines used for treatment of bullocks were from the private stock of the accused or that there was no stock of these medicines at the Veterinary Dispensary Ankleshwar on the date of giving treatment to rebut the presumption under Section 4 of the Act.

(iv) Even if it is believed for a moment that the accused gave medicines to bullocks

from his own private stock, the letter Exh.57 shows that the accused utilised medicines costing Rs.80 and not Rs.100/-. As per the evidence of Naranbha coupled with the evidence of his father on the day following the accident Naranbhai had paid Rs.80 to the accused in cash. The evidence of Naranbhai on the point of demand and payment of Rs.80/- is not cross-examined by the accused.

(v) The accused delayed the issuance of the medical certificate knowing fully well that it is a medico legal case and prepared the medical certificate only on 25-2-1987 on the date of trap and sent it to the Investigating Officer by post which was received by the Investigating Officer on 26-2-1987.

(vi)The receipt book Exh.39 seized by the Investigating Officer containing carbon copies of receipts issued to cattle owners does not contain the carbon copies of receipts Exhs.64/A and 64/B. This shows that these receipts were not genuine and prepared only to create evidence. Moreover, the

accused has not issued any certificate with regard to the health in respect of two bullocks as required in Medico -legal cases as per Appendix Memorandum Exh.58.

17. Considering all these aspects, all the contentions raised by the learned Counsel for the appellant does not merit acceptance.

18. In view of my aforesaid discussion, I am constrained to hold that it is established beyond reasonable doubt that the appellant-accused who was a public servant has in his capacity as such made an illegal demand of Rs.100/- for issuance of a Medical Certificate from the complainant Shri Ratanji Haribhai Ahir and by such corrupt and illegal means accepted Rs.100/- from the complainant and has also failed to rebut the presumption under Section 4 of the Act, and thereby, committed offence under Section 161 of the Indian Penal Code and under Section 5(2) of the Prevention of Corruption Act.

19. In the result, the appeal is dismissed. The judgment and order of conviction and sentence recorded in Special Case no.6 of 1988 dated 16-3-1994 by the learned Special Judge, Bharuch, are hereby confirmed. The bail bonds of the appellant are

cancelled. The appellant is given time for eight weeks for surrendering before the trial Court and filing proceedings before the higher forum.

(M.D.Shah,J.)

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